

THE LANIER LAW FIRM, P.C.
Christopher D. Banys SBN: 230038
Daniel M. Shafer SBN: 244839
cdb@lanierlawfirm.com
dms@lanierlawfirm.com
2200 Geng Road, Suite 200
Palo Alto, CA 94303
Tel: (650) 322-9100
Fax: (650) 322-9103

Attorneys for Plaintiffs

MORGAN, LEWIS & BOCKIUS LLP
MELINDA S. RIECHERT, State Bar No.
65504
ROBERT J. SMITH, State Bar No. 162784
Admitted pro hac vice
2 Palo Alto Square
3000 El Camino Real, Suite 700
Palo Alto, CA 94306-2122
Tel: 650.843.4000
Fax: 650.843.4001
mrieichert@morganlewis.com
rsmith@morganlewis.com

Attorneys for Defendant
HEWLETT-PACKARD COMPANY

FRANKLIN D. AZAR & ASSOCIATES, P.C.
FRANKLIN D. AZAR (*Pro Hac Vice*)
BARRY DUNN (SBN 151340)
NATHAN J. AXVIG (*Pro Hac Vice*)
JASON B. WESOKY (*Pro Hac Vice*)
TONYA MELNICHENKO (*Pro Hac Vice*)
MEGHAN MARTINEZ (*Pro Hac Vice*)
RICHARD BARKLEY (*Pro Hac Vice*)
14426 East Evans Avenue
Aurora, Colorado 80014
Tel: (303) 757-3300
Fax: (303) 757-3206

Attorneys for Plaintiffs

ANNE M. BRAFFORD, State Bar No. 237574
5 Park Plaza, 17th Floor
Irvine, California 92614-3508
Telephone: 949.399.7000
Facsimile: 949.399.7001
abafford@morganlewis.com

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEFFREY JOHNSON, JENNIFER RIESE,
SHAUN SIMMONS, MICHAEL
DEBEVER, and JAMES PURVIS,
individually, and on behalf of others
similarly situated,

Plaintiffs,

vs.

HEWLETT-PACKARD COMPANY and
DOES 1-25 inclusive,

Defendants.

Case No. C-09-03596 CRB

**STIPULATION AND [PROPOSED] ORDER
APPOINTING SPECIAL MASTER
PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 53**

1 WHEREAS on or about November 19, 2010, Plaintiffs Jeffrey Johnson, Jennifer Riese,
2 Shaun Simmons, Michael DeBever (whose request for dismissal is pending) and James Purvis
3 ("Plaintiffs") and Defendant Hewlett-Packard Company ("Defendant") (collectively, "the
4 Parties") were directed by this Court to propose a Special Master pursuant to Federal Rule of
5 Civil Procedure ("Rule") 53 in this action;

6 WHEREAS on or about November 22, 2010, the Parties provided the Court with their
7 respective proposals for a Special Master;

8 WHEREAS on or about December 1, 2010, the Court stated its approval of the Honorable
9 James L. Warren (Ret.) as Special Master in this action;

10 WHEREAS the Honorable James L. Warren (Ret.) is available and consents to serve as
11 Special Master in this action;

12 NOW, THEREFORE, IT IS HEREBY STIPULATED by the Parties, through their
13 respective counsel of record, that the Honorable James L. Warren (Ret.) may be appointed to
14 serve as the Special Master in this action in accordance with Rule 53.

15 Dated: December 13, 2010

FRANKLIN D. AZAR & ASSOCIATES, P.C.

17 By: /s/Meghan Martinez
18 Meghan Martinez

19 Attorneys for Plaintiffs JEFFREY JOHNSON,
20 JENNIFER RIESE, SHAUN SIMMONS,
MICHAEL DEBEVER, and JAMES PURVIS

21 Dated: December 13, 2010

MORGAN, LEWIS & BOCKIUS LLP

22 By: /s/Melina Riechert
23 Melinda S Riechert

24 Attorneys for Defendant
25 HEWLETT-PACKARD COMPANY
26
27
28

**BASED ON THE FOREGOING STIPULATION, AND GOOD CAUSE
APPEARING, THE COURT HEREBY ORDERS AS FOLLOWS:**

1. Appointment. The Honorable James L. Warren (Ret.) is hereby appointed Special Master in this action in accordance with Rule 53 to hear and resolve discovery disputes.

2. No Grounds for Disqualification. The Special Master has submitted an affidavit with this Court that states that he has no relationship to the Parties, counsel, action, or Court that would require disqualification of a judge under 28 U.S.C. § 455.¹ During the course of these proceedings, the Special Master and the Parties shall notify the Court immediately if they become aware of any potential grounds that would require disqualification.

3. Authority and Duties. The Special Master shall have the authority provided in Rule 53. Specifically, the duties of the Special Master shall include:

a. To hear and resolve all discovery disputes, either informally or by formal motion;

b. To hear from the Parties, and report and make recommendations to the Court with respect to the progress of discovery;

c. Pursuant to Rule 53 (b)(2)(C), the Special Master shall maintain orderly files consisting of all documents submitted to him by the Parties and of any of his written orders, findings, and/or recommendations;

d. Pursuant to Rule 53(e), the Special Master shall file any written orders, findings, and/or recommendations with the Court *via* the Court's Electronic Case Filing ("ECF").² Such filing shall fulfill the Special Master's duty to serve his orders on the Parties; and

e. The Special Master's orders shall be treated as rulings made by a Magistrate Judge of the United States District Court.

¹ The Clerk shall electronically file this affidavit, which is attached to this order.

² These cases are subject to ECF, pursuant to General Order 45, Section VI of which requires that all documents in such a case be filed electronically. General Order 45 provides at Section IV(A) that "Each attorney of record is obligated to become an ECF User and be assigned a user ID and password for access to the system upon designation of the action as being subject to ECF." If he has not already done so, the Court requests that Judge Warren register as an ECF user and be issued an ECF user ID and password. Forms and instructions can be found on the Court's web site at ecf.cand.uscourts.gov.


1 4. Communication. Pursuant to Rule 53(b)(2)(B), the Special Master may
2 communicate *ex parte* with the Court at any time. The Special Master shall not communicate *ex*
3 *parte* with any party or counsel unless the opposing counsel consents.

4 5. Compensation. Pursuant to Rule 53(b)(2)(E) and 53(h), the Special Master shall
5 be compensated according to his regular hourly rate of \$600 per hour. Plaintiffs and Defendant
6 shall each pay half of the Special Master's fees and the administrative fees required by JAMS that
7 are outlined in the attached fee schedule, unless the Special Master or the Court direct otherwise.
8 Notwithstanding the foregoing, by sharing these costs during this phase of the litigation, neither
9 Plaintiffs nor the Defendant waives their right respective rights to seek recovery or
10 reimbursement of such costs from the Special Master, or any Court.

11 6. Standard for the Court's Review. Pursuant to Rule 53(g)(3)-(5), the Court shall
12 review findings of fact made or recommended by the Special Master for clear error. The Court
13 shall review *de novo* any conclusions of law made or recommended by the Special Master.
14

15 7. Pending Discovery Disputes. All discovery matters presently pending
16 before the Court are hereby transferred to the Special Master, to be scheduled for resolution as
17 quickly as possible, understanding that time is of the essence.
18

19
20
21 Dated: December 16, 2010


Magistrate Judge Bernard Zimmerman